

1 GARMAN TURNER GORDON LLP
2 GREGORY E. GARMAN
3 Nevada Bar No. 6654
4 E-mail: ggarman@gtg.legal
5 WILLIAM M. NOALL
6 Nevada Bar No. 3549
7 Email: wnoall@gtg.legal
8 TERESA M. PILATOWICZ, ESQ.
9 Nevada Bar No. 9605
10 E-mail: tpilatowicz@gtg.legal
11 DYLAN T. CICILIANO
12 Nevada Bar No. 12348
13 E-mail: dciciliano@gtg.legal
14 7251 Amigo Street, Suite 210
15 Las Vegas, Nevada 89119
16 Tel: (725) 777-3000
17 Fax: (725) 777-3112
18 *Attorneys for Empery Tax Efficient, LP*

19
20
21
22
23
24
25
26
27
28
UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

19 In re: Case No. 22-14422-nmc
20 MUSCLEPHARM CORPORATION, Chapter 11 __
21 Debtor.
22
23

**DECLARATION OF TIMOTHY SILVER IN SUPPORT OF
MOTION TO QUASH SUBPOENAS**

19 I, Timothy Silver, make this Declaration under 28 U.S.C. § 1746 and declare as follows:
20
21 1. I am over the age of eighteen (18) years and competent to testify to the matters
22 asserted herein, of which I have personal knowledge, except as to those matters stated upon
23 information and belief. As to those matters stated upon information and belief, I believe them to
24 be true.

25 2. I am a Portfolio Manager with Empery Asset Management, LP. At all relevant
26 times, Empery Asset Management, LP has acted as investment advisor to Empery, among others.

27 3. I submit this Declaration for all permissible purposes under the Federal Rules of
28

1 Civil Procedure and Rules of Evidence in support of the *Motion to Quash Subpoenas* (“Motion”),¹
 2 filed by Empery Tax Efficient, LP.

3 4. On or about June 2, 2023, as requested by Mr. Drexler’s counsel, without limiting
 4 the production of my text messages to those that are substantive, I produced a copy of ALL of my
 5 text messages with any of Debtor’s directors, including without limitation Nicholas Rubin and Eric
 6 Hillman, from December 15, 2022 to June 2, 2023, to my counsel. A true and correct copy of that
 7 production is attached hereto as **Exhibit “A.”**

8 5. Also, to the best of my knowledge, I had no other text message conversations with
 9 any of Debtor’s directors during the relevant time periods other than what was produced. I did not
 10 knowingly delete any text messages with any of the Debtor’s directors.

11 6. At the time, I also checked the text messages on my cell phone and confirmed there
 12 were no other text messages with any of Debtor’s directors during the relevant time periods.

13 7. Upon learning that Mr. Drexler had alleged we destroyed or withheld messages, I
 14 again went back and reviewed and compared the text messages on my cell phone and on Ryan
 15 Lane’s cell phone to what was produced. Again, I confirmed there were no other such text
 16 messages.

17 I declare under penalty of perjury under the laws of the United States of America that the
 18 foregoing is true and correct.

19 Executed this 16th day of June, 2023.



TIMOTHY SILVER

28 1 Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Motion.

EXHIBIT “A”

Exhibit A-1

"Text messages between Nick Rubin
and Tim Silver"



NR



Nick >

iMessage

Thu, Feb 16 at 3:49 PM

I butt dialed you but I am in court

K sent you an email to set up a time
to catch up

Thu, Mar 16 at 8:48 PM

Can you and Ryan pls call me after
this call .

I'm at a dinner outside so I need to
jump back inside for a few and can
call when I walk out

Call you in twenty?

Delivered



iMessage



ICA0017

Exhibit A-2

"Text messages between Tim Silver, Eric Hillman, and Nick Rubin"



EH
NR



2 People >

iMessage

Thu, Mar 16 at 2:05 PM

Eric Hillman

EH

Am I on the wrong call?



iMessage



ICA0005

Exhibit A-3

"Text messages between Eric Hillman and Tim Silver"

5:45



Eric >

Mon, Dec 19 at 5:58 PM

Just calling you back to follow up.
Wanted to get you before the 6pm
cutoff. Nothing urgent to discuss

Thu, Dec 29 at 3:24 PM



**Copy of 13 Week Budget
with GM% beginning
12-28-22.xlsx**

Office Spreadsheet · 24 KB

Fri, Jan 6 at 6:38 PM

Sorry Tim went to early dinner.
Missed lunch and I MF'r without food.
That went a lil longer than I expected
today. Guess we start again Monday



Missed eating today as well due to
that. Just wanted to touch base.
Enjoy your weekend. Talk to you
Monday

Mon, Jan 9 at 2:02 PM

Cal you right back

Fri, Jan 13 at 1:48 PM

Call you back. On one

Mon Jan 16 at 2:59 PM



iMessage



ICA0006



Eric >

Fri, Jan 13 at 1:48 PM

Call you back. On one

Mon, Jan 16 at 2:59 PM

Thoughts in me letting Sam know there might be a change in CRO's. I spoke to Mike today and with marc roth this afternoon. Would CRO be my decision or yours? Im off but working by text.



Let's touch base tomorrow. For compliance reasons I can't text about material work stuff. My gut is no harm in letting Sam know what you are thinking and understanding process from his perspective. It's your call (the company) with our consent right. I am around to discuss over the phone if you would like

Wed, Feb 15 at 11:33 AM

Can you send me your coordinators info please

All good here based on Rita's emails?

Tu



iMessage



ICA0007

547



EH



Eric >

Tu

Text Message
Fri, Feb 17 at 12:32 PM

Call you in a few

Question you dont need to call back.
Working on a 1.1m copang korea
order at 31%. Copang is on 60 day
terms at least for now. Is that
factorable?

iMessage
Mon, Mar 6 at 2:42 PM



In our MP board call. Call as soon as
im off

Mon, Mar 6 at 4:13 PM

Call you back

Ok. Ive got a zoom call with my tram
and informed choice so text me if you
will and i'll call you. Thx. E

Got it sorry just saw this

Thu, Mar 9 at 11:56 AM

MP_ProteinShake



iMessage



ICA0008

548



EH



Eric >

Call you back

Ok. I've got a zoom call with my tram
and informed choice so text me if you
will and i'll call you. Thx. E

Got it sorry just saw this

Thu, Mar 9 at 11:56 AM



MP_ProteinShake
Mock1.heic
Image · 82 KB



Wed, Apr 5 at 12:06 PM

Did they reschedule the exam

Wed, Apr 5 at 3:02 PM

Coming. We are on phone with tony
at europa

Tue, Apr 25 at 10:09 AM



Butt dialed

Wed, Apr 26 at 4:12 PM



No need to call back

Delivered



iMessage



Apple Cash



ICA0009

548

Photo

Done



ICA0010

Exhibit A-4

"Text messages between Tim Silver,
Ryan Lane, and Eric Hillman"

864



RL

EH



2 People >

iMessage

Thu, Jan 12 at 11:50 AM

Eric Hillman

EH



Ryan Lane

RL

Just tried u Eric

Sat, Feb 25 at 9:05 AM

Eric Hillman

Just an odd note about europa. I could get rid of all accounting. Id have access to full mktng dept. They have office space to build a sales team. We could build out the drink mkt faster. Hub would bring 500k to bottom line each month with additional vendors using the program. Mgt tram thats in place is awesome and if it fell under MP I could help direct it. Just thoughts. Have you even spoken to AFI

EH

And no im not working on Sat. Lol

Haha breaking your rules!

Pete introduced us and we are going to try to speak next week

Fri, Mar 24 at 7:09 PM



iMessage



805



RL

EH



2 People >

Pete introduced us and we are going
to try to speak next week

Fri, Mar 24 at 7:09 PM

Eric Hillman

Just a teaser



EH

Looks great!

Ryan Lane



iMessage



805



RL

EH



2 People >

Ryan Lane



RL

Mon, Mar 27 at 6:49 PM

Eric Hillman



Just so you know my motto. Go Big or Go Home. 200LBS choc and Van informed choice informed protein. 2 out the door today

EH

That's huge. Is that \$1,500?? Sports



iMessage



805



RL
EH



2 People >

EH

Just so you know my motto. Go Big or Go Home. 200LBS choc and Van informed choice informed protein. 2 out the door today

That's huge. Is that \$1,500?? Sports teams that buy that?

Eric Hillman

EH

\$1,600+\$75 shipping. Sold 2 today at 42%. Love it.

Ryan Lane

RL

Holy cow!



Too big to bring home!

RL

42% gets me goin

RL

That lid is the real deal with the clamp!

Yesterday 8:41 PM

Eric Hillman

EH

Sorry guys just heard from Nick. Will 10am work?

Works for me. I can send a dial in

Ryan Lane

RL

Works



iMessage

